

**Before the  
Administrative Hearing Commission  
State of Missouri**

STATE BOARD OF NURSING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-2189 BN
	)	
AMY SCHAEFER (N/K/A AMY	)	
YATES-KARLE),	)	
	)	
Respondent.	)	

**DECISION**

Amy Schaefer is subject to discipline for using a pressure point to subdue a patient, and for being placed on an Employee Disqualification List.

**Procedure**

On December 12, 2012, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Schaefer. Schaefer was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on May 4, 2013. On June 11, 2013, we granted the Board’s motion for default decision since Schaefer had filed no answer or other responsive pleading. Schaefer, through counsel, filed a motion to set aside the default decision on June 18, 2013. We reopened the case, and Schaefer filed her answer on July 12, 2013.

We held a hearing on May 22, 2014. Ian Hauptli represented the Board. Schaefer appeared in person and by counsel, David F. Barrett. The case became ready for our decision on August 28, 2014, the date the last written argument was due.

## **Findings of Fact**

1. At all times relevant to this case, Schaefer (n/k/a Yates-Karle) was licensed by the Board as a licensed practical nurse (“LPN”), and her license was current and active.
2. On June 8, 2011, Schaefer was working at Georgian Gardens, a skilled nursing facility located in Potosi, Missouri, as the charge nurse and was responsible for providing care to residents suffering from Huntington’s chorea.
3. Huntington’s chorea is a progressive disease that affects mood, cognition, and movement. Some Huntington’s chorea patients are combative.
4. On June 8, 2011, a certified nurse assistant (“CNA”) working at Georgian Gardens, Lora Dinger, reported a concern about Schaefer’s handling of C.T., one of the Georgian Gardens residents with Huntington’s chorea, to the Assistant Director of Nursing, Susan Frago, RN, BSN.
5. Frago questioned Schaefer about the alleged treatment of C.T., and Schaefer disclosed that she had recently learned how to use the “pressure point” in the wrist to deal with combative residents in order to “bring them down.”<sup>1</sup>
6. The maneuver Schaefer described to Frago involved the bending of the patient’s hand forward while applying pressure to the wrist. Based on Schaefer’s description, Frago took immediate steps to suspend Schaefer, pending an investigation.
7. Nurses should not use pressure points to control patients.
8. In a written statement Schaefer tendered upon her suspension on June 9, 2011, she described the incident with C.T.: “I actually just learned how to block his hits and kicks and hold his wrist in such a manner as to keep him from being able to continue to physically combat me or staff’s [sic]... P.S. I do remember saying to the CNAs that it takes very little pressure to hold a

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<sup>1</sup> Tr. 14-15.

wrist that way that I learned, so it is safer.”<sup>2</sup> She stated her use of the term “pressure point” had been a mistake.

9. During the subsequent investigation related to Schaefer’s admitted use of pressure points, C.T. and another resident with Huntington’s chorea, D.H., were discovered to have bruising around their wrists.

10. In Schaefer’s nursing notes appearing in C.T.’s chart, in entries made June 3 and June 8, 2011, Schaefer makes reference to getting C.T. “subdued.”

11. On July 25, 2012, after conducting its own investigation, the Department of Health and Senior Services placed Schaefer on its Employee Disqualification List (“EDL”) for a period of 18 months for her conduct at Georgian Gardens.

### **Conclusions of Law**

We have jurisdiction to hear the case. Section 621.045.<sup>3</sup> The Board has the burden to prove, by a preponderance of the evidence, that Schaefer has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates “cause” to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)). We must assess the credibility of witnesses, and we are free to believe all, part, or none of the testimony of any witness. *Id.* (*citing Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001)).

The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority,

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<sup>2</sup>Ex. A.

<sup>3</sup> Statutory references are to RSMo Cum. Supp. 2013 unless otherwise noted.

permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or his certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

\* \* \*

(12) Violation of any professional trust or confidence;

\* \* \*

(15) Placement on an employee disqualification list or other related restriction or finding pertaining to employment within a health-related profession issued by any state or federal government or agency following final disposition by such state or federal government or agency[.]

#### Professional Standards – Subdivision (5)

The Board alleges that Schaefer’s conduct in using pressure points to control the movement of residents in a skilled nursing facility constituted incompetence and misconduct in her functions as a nurse.

As a preliminary matter, we note that there is no definition of “pressure point” in the record, and we are unaware of any statutes or regulations to guide us in an understanding of this term. Therefore, we turn to the dictionary to determine the plain meaning of the term. *See E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011) (Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on); *State ex rel. Evans v. Brown Builders Elec. Co., Inc.*, 254 S.W.3d 31, 35 (Mo. banc

2008) (statutes and regulations are interpreted according to the same rules). “Pressure point,” as found in the dictionary, is:

a region of the body in which the distribution of soft and skeletal parts is such that a static position (as a part in a cast or of a bedfast person) tends to cause circulatory deficiency and necrosis due to local compression of blood vessels[.]

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1796 (1986).

We also note that the Board presented only inferential evidence that the use of pressure points by a nurse is inappropriate. It presented no expert testimony, for example, from which we could make such a finding. At the hearing, however, Schaefer denied using pressure points and admitted that “[p]ressure points are not to be used[.]” Tr. 33. We find that nurses should not use pressure points to control patient behavior, and that Schaefer knew that.

Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988). Although we are unable to determine precisely what Schaefer’s state of mind was at the time she was interacting with C.T. on June 8, 2011, we may infer it from the surrounding circumstances. *Duncan v. Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs*, 744 S.W.2d 524, 533 (Mo. App. E.D. 1988).

Schaefer’s own description of the purpose of the technique—to bring a resident down, control his movements, and subdue him -- is evidence that her conduct was intentional. While Schaefer argues that, despite her use of the term “pressure points,” she merely used her own limbs to block C.T.’s blows and that he caused his own bruises when he hit her. She describes her conduct as purely defensive, and argues that she had the right to defend herself against potential injury. But in her initial interview with Frago, she admitted to using pressure points to

control C.T., who had struck and hurt her before. The bruising on his wrist is highly suggestive that she did. We find Frago’s testimony as to Schaefer’s initial admission and the physical evidence of bruising on C.T.’s wrist to be more persuasive than Schaefer’s subsequent denials that she used pressure points. We find that she used pressure points to control C.T., and that the intentional use of pressure points by a nurse to control the behavior of very ill nursing home residents by force is misconduct.

Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession. *Albanna v. State Bd. of Regis’n for the Healing Art*, 293 S.W.3d 423, 436 (Mo. banc 2009). An evaluation of incompetency necessitates a broader-scale analysis, one taking into account the licensee’s capacities and successes. *Id.* We cannot perform such an analysis based on one incident. Therefore, we do not find Schaefer to be subject to discipline for incompetence.

We find cause to discipline Schaefer for misconduct under § 335.066.2(5).

#### Professional Trust – Subdivision (12)

The phrase “professional trust or confidence” is not defined in Chapter 335. Nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]...  
engaged in one of the learned professions or in an occupation  
requiring a high level of training and proficiency...[;  
and]...characterized or conforming to the technical or ethical  
standards of a profession or occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident  
dependence on the character, ability, strength, or truth of someone  
or something...[.]

*Id.* at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.*

Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences.

Schaefer used the improper technique of exploiting a pressure point on a vulnerable resident at her place of employment. In doing so, she physically abused a patient. Even if C.T. posed a risk to her, she had an obligation to utilize the special knowledge and skills of a nurse in order to provide nursing care to him without risking harm to him or herself. Schaefer violated the professional trust placed in her by her employer, colleagues, and the residents of Georgian Gardens. There is cause to discipline her license under § 335.066.2(12).

#### Placement on EDL – Subdivision (15)

Schaefer was placed on an EDL by the Missouri Department of Health and Senior Services. She is subject to discipline under § 335.066.2(15).

#### **Summary**

Schaefer is subject to discipline under § 335.066.2(5), (12), and (15).

SO ORDERED on October 24, 2014.

\s\ Karen A. Winn  
KAREN A. WINN  
Commissioner